

Assembly Bill No. 2193

CHAPTER 604

An act to add and repeal Chapter 6.5 (commencing with Section 1650) of Division 2 of the Fish and Game Code, relating to fish and wildlife.

[Approved by Governor September 26, 2014. Filed with
Secretary of State September 26, 2014.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2193, Gordon. Habitat Restoration and Enhancement Act.

Existing law establishes the Department of Fish and Wildlife in the Natural Resources Agency, administered by the Director of Fish and Wildlife. Existing law requires the director to administer various programs for the protection and conservation of fish and wildlife resources.

This bill would enact the Habitat Restoration and Enhancement Act and require the director to approve a habitat restoration or enhancement project, as defined, if specified conditions are met as determined by the director. The act would create the Habitat Restoration and Enhancement Account within the Fish and Game Preservation Fund and authorize the department to enter into an agreement to accept funds to achieve the purposes of the Habitat Restoration and Enhancement Act and deposit those funds into that account. The act would require the department to assess an application fee for a project submitted to the department consistent with specified fees adopted by the department but would prohibit the application fee from exceeding reasonable administrative and implementation costs of the department relating to the project. Moneys in the account would be available to the department, upon appropriation by the Legislature, for the purposes of administering and implementing the Habitat Restoration and Enhancement Act. The bill would require the department to submit a report on the implementation of the act to the Legislature no later than December 31, 2020. The bill would repeal the act on January 1, 2022.

The people of the State of California do enact as follows:

SECTION 1. (a) The Legislature finds and declares all of the following:

(1) California is home to over 300 animal and plant species listed as either threatened or endangered by the state and federal governments. Some of these species' populations are so low that recovery actions must be taken immediately to avoid further population declines or extinctions of the species.

(2) Historic and continued degradation of our state's ecosystems, whether in remote areas or in our cities, continues to impact the habitats of these protected species and other animals and plants.

(3) Recovery of listed species depends largely on significant improvements in habitat quality and requires numerous habitat restoration projects statewide.

(4) Demand for these environmentally beneficial projects far outpaces the regulatory approval process. As a result, hundreds of small-scale projects designed to benefit California's most vulnerable species and natural habitats are not being implemented.

(5) Expedited and coordinated agency permitting processes for small-scale restoration projects have been shown to greatly boost the number and geographic distribution of environmentally beneficial projects across California – projects that cumulatively improve water quality and aid in the recovery of salmon and steelhead populations, migratory birds, and other sensitive species.

(b) It is the intent of the Legislature in enacting this measure to provide for substantial permitting efficiency and thereby encourage increased implementation of voluntary, environmentally beneficial, small-scale habitat restoration projects that do all of the following:

(1) Provide an individual and cumulative net environmental benefit.

(2) Incorporate measures to protect against any short-term substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project.

(3) Follow applicable preexisting state and federal agency permits, certifications, and exemptions.

SEC. 2. Chapter 6.5 (commencing with Section 1650) is added to Division 2 of the Fish and Game Code, to read:

CHAPTER 6.5. HABITAT RESTORATION AND ENHANCEMENT ACT

1650. This chapter shall be known, and may be cited, as the Habitat Restoration and Enhancement Act.

1651. As used in this chapter:

(a) "Fish passage guidelines" means those guidelines specified in the department's California Salmonid Stream Habitat Restoration Manual and the National Marine Fisheries Service, Southwest Region, Guidelines for Salmonid Passage at Stream Crossings, and subsequent amendments or updates to either document.

(b) "Habitat restoration or enhancement project" means a project with the primary purpose of improving fish and wildlife habitat. A habitat restoration or enhancement project shall meet the eligibility requirements for the State Water Resources Control Board's Order for Clean Water Act Section 401 General Water Quality Certification for Small Habitat Restoration Projects, or its current equivalent at the time the project proponent submits a written request pursuant to Section 1652 or 1653. The order or current equivalent may include programmatic waivers or waste discharge requirements for small habitat restoration projects.

(c) “Project proponent” means a person, public agency, or nonprofit organization seeking to implement a habitat restoration or enhancement project.

(d) “Species recovery plan” means a guidance document prepared by a government agency that identifies recovery actions, based upon the best scientific and commercial data available, necessary for the protection and recovery of listed species.

1652. (a) A project proponent may submit a written request to approve a habitat restoration or enhancement project to the director pursuant to this section if the project has not received certification pursuant to the State Water Resources Control Board’s Order for Clean Water Act Section 401 General Water Quality Certification for Small Habitat Restoration Projects, or its current equivalent at the time the project proponent submits the written request. If the project has received certification pursuant to that order, or its current equivalent, the project proponent may submit a request for approval of the project pursuant to Section 1653.

(b) A written request to approve a habitat restoration or enhancement project pursuant to this section shall contain all of the following:

(1) The name, address, title, organization, telephone number, and email address of the natural person or persons who will be the main point of contact for the project proponent.

(2) A full description of the habitat restoration and enhancement project that includes the designs and techniques to be used for the project, restoration or enhancement methods, an estimate of temporary restoration- or enhancement-related disturbance, project schedule, anticipated activities, and how the project is expected to result in a net benefit to any affected habitat and species, consistent with paragraph (4) of subdivision (c).

(3) An assessment of the project area that provides a description of the existing flora and fauna and the potential presence of sensitive species or habitat. The assessment shall include preproject photographs of the project area that include a descriptive title, date taken, the photographic monitoring point, and photographic orientation.

(4) A geographic description of the project site including maps, land ownership information, and other relevant location information.

(5) A description of the environmental protection measures incorporated into the project design, so that no potentially significant adverse effects on the environment, as defined in Section 15382 of Title 14 of the California Code of Regulations, are likely to occur with application of the specified environmental protection measures. Environmental protection measures may include, but are not limited to, appropriate seasonal work limitations, measures to avoid and minimize impacts to water quality and potentially present species protected by state and federal law, and the use of qualified professionals for standard preconstruction surveys where protected species are potentially present.

(6) Substantial evidence to support a conclusion that the project meets the requirements set forth in this section. Substantial evidence shall include

references to relevant design criteria and environmental protection measures found in the documents specified in paragraph (4) of subdivision (c).

(7) A certifying statement that the project will comply with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), which may include, but not be limited to, the requirements of Section 15333 of Title 14 of the California Code of Regulations.

(c) Notwithstanding any other law, within 60 days after receiving a written request to approve a habitat restoration or enhancement project, the director shall approve a habitat restoration or enhancement project if the director determines that the written request includes all of the required information set forth in subdivision (b), and the project meets all of the following requirements:

(1) The project purpose is voluntary habitat restoration and the project is not required as mitigation.

(2) The project is not part of a regulatory permit for a nonhabitat restoration or enhancement construction activity, a regulatory settlement, a regulatory enforcement action, or a court order.

(3) The project meets the eligibility requirements of the State Water Resources Control Board's Order for Clean Water Act Section 401 General Water Quality Certification for Small Habitat Restoration Projects, or its current equivalent at the time the project proponent submits the written request, but has not received certification pursuant to that order or its equivalent.

(4) The project is consistent with, or identified in, sources that describe best available restoration and enhancement methodologies, including one or more of the following:

(A) Federal- and state-listed species recovery plans or published protection measures, or previously approved department agreements and permits issued for voluntary habitat restoration or enhancement projects.

(B) Department and National Marine Fisheries Service fish screening criteria or fish passage guidelines.

(C) The department's California Salmonid Stream Habitat Restoration Manual.

(D) Guidance documents and practice manuals that describe best available habitat restoration or enhancement methodologies that are utilized or approved by the department.

(5) The project will not result in cumulative adverse environmental impacts that are significant when viewed in connection with the effects of past, current, or probable future projects.

(d) If the director determines that the written request does not contain all of the information required by subdivision (b), or fails to meet the requirements set forth in subdivision (c), or both, the director shall deny the written request and inform the project proponent of the reason or reasons for the denial.

(e) The project proponent shall submit a notice of completion to the department no later than 30 days after the project approved pursuant to this

section is completed. The notice of completion shall demonstrate that the project has been carried out in accordance with the project's description. The notice of completion shall include a map of the project location, including the final boundaries of the restoration area or areas and postproject photographs. Each photograph shall include a descriptive title, date taken, photographic monitoring point, and photographic orientation.

(f) The project proponent shall submit a monitoring report describing whether the restoration project is meeting each of the restoration goals stated in the project application. Each report shall include photographs with a descriptive title, date taken, photographic monitoring point, and photographic orientation. The monitoring reports for Section 401 Water Quality Certification or waste discharge requirements of the State Water Resources Control Board or a regional water quality control board, or for department or federal voluntary habitat restoration programs, including, but not limited to, the Fisheries Restoration Grant Program, may be submitted in lieu of this requirement.

1653. (a) A project proponent may submit a written request to approve a habitat restoration or enhancement project to the director pursuant to this section if the project has received certification pursuant to the State Water Resources Control Board's Order for Clean Water Act Section 401 General Water Quality Certification for Small Habitat Restoration Projects, or its current equivalent at the time the project proponent submits the written request.

(b) A written request to approve a habitat restoration or enhancement project pursuant to this section shall include all of the following:

(1) Notice that the project proponent has received a notice of applicability that indicates that the project is authorized pursuant to the State Water Resources Control Board's Order for Clean Water Act Section 401 General Water Quality Certification for Small Habitat Restoration Projects, or its equivalent at the time the project proponent submits the written request.

(2) A copy of the notice of applicability.

(3) A copy of the notice of intent provided to the State Water Resources Control Board or a regional water quality control board.

(4) A description of species protection measures incorporated into the project design, but not already included in the notice of intent, to avoid and minimize impacts to potentially present species protected by state and federal law, such as appropriate seasonal work limitations and the use of qualified professionals for standard preconstruction surveys where protected species are potentially present.

(5) The fees required pursuant to Section 1655.

(c) Upon receipt of the notice specified in paragraph (1) of subdivision (b), the director shall immediately have published in the General Public Interest section of the California Regulatory Notice Register the receipt of that notice.

(d) Within 30 days after the director has received the notice of applicability described in subdivision (b), the director shall determine

whether the written request accompanying the notice of applicability is complete.

(e) If the director determines within that 30-day period, based upon substantial evidence, that the written request is not complete, then the project may be authorized under Section 1652.

(f) The director shall immediately publish the determination pursuant to subdivision (d) in the General Public Interest section of the California Regulatory Notice Register.

(g) The project proponent shall submit the monitoring plan, monitoring report, and notice of completion to the department as required by the State Water Resources Control Board's Order Clean Water Act Section 401 General Water Quality Certification for Small Habitat Restoration Projects, or its current equivalent at the time the project proponent submits the written request. The order or its current equivalent may include programmatic waivers or waste discharge requirements for small scale restoration projects.

1654. (a) The director's approval of a habitat restoration or enhancement project pursuant to Section 1652 or 1653 shall be in lieu of any other permit, agreement, license, or other approval issued by the department, including, but not limited to, those issued pursuant to Chapter 6 (commencing with Section 1600) and Chapter 10 (commencing with Section 1900) of this Division and Chapter 1.5 (commencing with Section 2050) of Division 3.

(b) Nothing in this chapter shall be construed as expanding the scope of projects requiring a permit, agreement, license, or other approval issued by the department.

(c) (1) If the director determines at any time that the project is no longer consistent with subdivision (c) of Section 1652 or subdivision (b) of Section 1653, as applicable, due to a material change between the project as submitted and the project being implemented or a change in the environmental circumstances in the area of implementation, the director shall notify the project proponent in writing and project implementation shall be suspended. Written notice from the director shall be delivered in person, by certified mail, or by electronic communication to the project proponent and shall specify the reasons why approval of the project was suspended. The approval for a project shall not be revoked pursuant to this subdivision unless it has first been suspended pursuant to this subdivision.

(2) Within 30 days of receipt of a notice of suspension, the project proponent may file an objection with the director. Any objection shall be in writing and state the reasons why the project proponent objects to the suspension. The project proponent may provide additional environmental protection measures, design modifications, or other evidence that the project is consistent with subdivision (c) of Section 1652 or subdivision (b) of Section 1653, as applicable, and request that the notice of suspension be lifted and approval granted.

(3) The director shall revoke approval or lift the suspension of project approval within 30 days after receiving the project proponent's objection pursuant to paragraph (2).

(d) Pursuant to Section 818.4 of the Government Code, the department and any other state agency exercising authority under this section shall not be liable with regard to any determination or authorization made pursuant to this section.

1655. (a) The Habitat Restoration and Enhancement Account is hereby created in the Fish and Game Preservation Fund.

(b) The department may enter into an agreement to accept funds from any public agency, person, business entity, or organization to achieve the purposes of this chapter. The department shall deposit any funds so received in the account. The funds received shall supplement existing resources for department administration and permitting of projects and programs included in this chapter.

(c) The department shall assess an application fee for a project submitted to the department pursuant to Section 1652 or 1653 consistent with the fees adopted by the department pursuant to Chapter 6 (commencing with Section 1600), but the application fee shall not exceed the reasonable administrative and implementation costs of the department relating to the project.

(d) Moneys in the account shall be available to the department, upon appropriation by the Legislature, for the purposes of administering and implementing this chapter.

1656. (a) The department shall submit a report on the implementation of this chapter to the Legislature no later than December 31, 2020, which shall include, but not be limited to, the number, type, and geographical distribution of approved projects, funding adequacy, and recommendations for changes and improvements in the program.

(b) A report to be submitted pursuant to subdivision (a) shall be submitted in compliance with Section 9795 of the Government Code.

1657. This chapter shall remain in effect only until January 1, 2022, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2022, deletes or extends that date.